

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CHARLES HERBERT PROCTOR, III
and SYNOVA ASSET MANAGEMENT,
LLC, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

JPMORGAN CHASE & CO., J.P.
MORGAN CLEARING CORP., J.P.
MORGAN SECURITIES LLC, J.P.
MORGAN FUTURES, INC. (now known
as J.P. MORGAN SECURITIES LLC),
and JOHN DOES 1-50,

Defendants.

Case No. 20 Civ. 05360 (PAE)

ECF Case

ROBERT CHARLES CLASS A, L.P., on
Behalf of Itself and All Others Similarly
Situated,

Plaintiff,

v.

J.P. MORGAN CHASE & CO., J.P.
MORGAN CLEARING CORP., J.P.
MORGAN SECURITIES LLC, J.P.
MORGAN FUTURES, INC. (now known
as J.P. MORGAN SECURITIES LLC),
and JOHN DOES 1-50,

Defendants.

Case No. 20 Civ. 05298 (PAE)

ECF Case

[caption continued next page]

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO APPOINT
LOWEY DANNENBERG, P.C. AND KIRBY MCINERNEY LLP
AS INTERIM CO-LEAD CLASS COUNSEL**

THOMAS GRAMATIS, on Behalf of
himself and All Others Similarly Situated,

Plaintiff,

v.

JPMORGAN CHASE & CO., J.P.
MORGAN CLEARING CORP., J.P.
MORGAN SECURITIES LLC, J.P.
MORGAN FUTURES, INC. (now known
as J.P. MORGAN SECURITIES LLC),
and JOHN DOES 1-50,

Defendants.

Case No. 20 Civ. 05918 (PAE)

ECF Case

BUDO TRADING LLC, Individually and
on Behalf of All Others Similarly Situated,

Plaintiff,

v.

J.P. MORGAN CHASE & CO., J.P.
MORGAN CLEARING CORP., J.P.
MORGAN SECURITIES LLC, J.P.
MORGAN FUTURES, INC. (now known
as J.P. MORGAN SECURITIES LLC),
and JOHN DOES 1-50,

Defendants.

Case No. 20 Civ. 05772 (PAE)

ECF Case

INTRODUCTION

Freed Kanner London & Millen LLC (“Freed Kanner”) submits this memorandum in support of the application (“Application”) to appoint Lowey Dannenberg P.C. and Kirby McInerney LLP (collectively, the “Lowey/Kirby Team”) Interim Co-Lead Counsel for the putative class. This proposal is the result of the hard work of the Lowey/Kirby Team and the highly-qualified firms stepping back to support this consensus leadership structure. The strength and exceptional credentials of this proposed co-lead counsel persuaded many highly-qualified firms, including Freed Kanner, to support it rather than separately moving for Court-appointment themselves.

Freed Kanner represents Budo Trading LLC, a professional trading firm that traded hundreds of thousands, if not more, of Treasury futures and options during the relevant period. Despite Freed Kanner’s unquestionable qualifications¹ to serve in a leadership role in this litigation, along with its representation of what is likely to be one of the largest claims filed thus far in this consolidated action (which often merits a leadership role), Freed Kanner firmly supports the Lowey/Kirby Team to lead this litigation. The Lowey/Kirby Team (i) performed significant work in this matter developing the first-filed complaint; (ii) has an unmatched track record of prosecuting CEA cases (which includes the two largest recoveries in the history of CEA litigation);

¹ Presently, the firm serves as co-lead counsel in four class action cases: *In re Automotive Parts Antitrust Litig.*, No. 12-md-02311, ECF No. 60 (E.D. Mich. Mar. 19, 2012) (settlements for the direct purchaser class to date total over \$550 million); *In re Chicago Board Options Exchange Volatility Index Manipulation Antitrust Litig.*, 18-cv-04171, ECF No. 241 (N.D. Ill. Apr. 16, 2019) (alleging violations of the Commodity Exchange Act); *In re Opana ER Antitrust Litig.*, No. 14-cv-10150, MDL 2580, ECF No. 78 (N.D. Ill. Apr. 2, 2015); and *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 05-md-1720, MDL No. 1720, ECF No. 6754 (E.D.N.Y. Nov. 30, 2016).

and (iii) has developed an in-house e-discovery system designed to save the putative class hundreds of thousands, if not millions, of dollars in costs.

In connection with its filing of two cases² against the JP Morgan Defendants, Freed Kanner has met and discussed this matter at length with all counsel for other plaintiffs pending before this Court. Since the inception of this litigation, Freed Kanner believed the best way forward for the class was to bypass the time-consuming Multidistrict Litigation process, privately order the leadership structure, and work with the larger group to expeditiously file a consolidated complaint. The Lowey/Kirby Team shared this view. Freed Kanner respectfully requests this Court appoint the Lowey/Kirby Team as Interim Co-Lead Class Counsel so they may use their factual, legal, and economic expertise to manage the prosecution and preparation of this matter for trial.

ARGUMENT

Freed Kanner, on behalf of Plaintiffs Budo Trading LLC and Thomas Gramatis, believe the Lowey/Kirby Team are the ideal advocates for the Plaintiffs in this litigation when viewed in light of the Fed. R. Civ. P. 23(g) factors enacted to guide this determination. As set forth below, the Lowey/Kirby Team have done the most work to develop this litigation; they have extensive subject-matter expertise and a proven track record of success; and they will use their e-discovery infrastructure to effectively manage costs to the benefit of the putative class.

First Filed Complaint. The first-filed *Proctor* complaint served as the catalyst for similar allegations in the subsequent cases filed in this consolidated action. In appointing lead counsel, courts consistently give significant weight to which firm investigated and filed the first complaint, especially where that complaint served as a “catalyst” for later complaints. *In re Interest Rate*

² *Budo Trading LLC v. JPMorgan Chase & Co., et al.*, Case No. 20 Civ. 05772 (PAE) (S.D.N.Y.) and *Gramatis v. JPMorgan Chase & Co., et al.*, Case No. 20 Civ. 05918 (PAE) (S.D.N.Y.)

Swaps Antitrust Litig., 16-MD-2704, 2016 WL 4131846, at *3 (S.D.N.Y. Aug. 3, 2016). Appointing the Lowey/Kirby Team to interim co-lead counsel roles will ensure that the counsel that has done the most to develop this case continue to advance the litigation. *See In re Facebook, Inc., IPO Sec. and Deriv. Litig.*, 288 F.R.D. 26, 44 (S.D.N.Y. 2012).

Here, *Proctor* explained in great detail the relevant factual background regarding how commodity futures contracts are traded on CME Globex, the electronic trading platform used for futures and options contracts. *See Proctor v. JPMorgan Chase & Co.*, No. 20 Civ. 2666, ECF No. 1, at ¶¶ 22, 29 (S.D.N.Y. May 1, 2020). *Proctor* further detailed the mechanics of spoofing and the significant order book imbalance that spoofing causes. *Id.* at ¶¶ 30-32; 40-42. *Proctor* also alleged in great detail the process how JPMorgan manipulated the treasury futures markets through unlawful and manipulative spoofing, by placing orders for treasury futures to send false supply and demand signals and then canceled those orders prior to execution. *Id.* at ¶¶ 48-53.

The well-pled factual and legal allegations found in the first filed complaint is indicative of the institutional knowledge of the Lowey/Kirby Team that is second to none. These efforts through the first-filed complaint have substantially advanced this litigation on behalf of all plaintiffs, as proven by the fact that so many other plaintiffs used these allegations in their complaints.

Unmatched Track Record of Success in Similar Cases. The Lowey/Kirby Team have unmatched credentials in CEA litigation. They have a track record of success in cases that are substantially similar to this one. Their expertise in CEA litigation is a primary reason Freed Kanner is comfortable stepping back on behalf of a large plaintiff with a significant financial interest in the outcome of this litigation. Freed Kanner recognizes that through years of successes the Lowey/Kirby Team have already devoted substantial resources to pioneer and refine the legal theories asserted in this litigation. Both firms are nationally recognized leaders in CEA litigation,

having won billions of dollars for plaintiffs in similarly complex class actions. Freed Kanner knows from experience and reputation that the Lowey/Kirby Team are prepared to advance the necessarily substantial resources needed to prosecute plaintiffs' claims. Further, the proposed structure strikes the right balance between efficient case-management and optimal protection of all plaintiffs' interests.

E-Discovery System. The Freed Kanner attorneys involved in this litigation have run discovery in some of the largest class action cases in history.³ They understand the significant savings for the class that can result from using an in-house e-discovery platform rather than paying a vendor, typically at a monthly rate based on data size. In private ordering discussions the Lowey/Kirby Team articulated the significant savings they can provide the putative class through their ability to conduct end-to-end e-discovery completely on their internal platform. Keeping costs low through this technology was an important factor to Freed Kanner in recommending the Lowey/Kirby Team lead this litigation.

* * *

The *Budo* Complaint was brought by Plaintiffs who have a substantial stake in the litigation, alleging significant injury through the spoofing actions of JPMorgan, and who have been and will be involved in overseeing the work of counsel. Freed Kanner knows that its clients and the putative class interests will be best represented by this Court appointing the Lowey/Kirby Team to lead the litigation.

For the foregoing reasons, and because the Application otherwise satisfies the factors set out in Fed. R. Civ. P. 23(g), Plaintiffs Budo Trading LLC and Thomas Gramatis support the

³ See, e.g., *Kleen Products, et al. v. International Paper, et al.*, No. 10-cv-05711 (N.D. Ill.) (settlements of \$376 million); *In re Lithium Ion Batteries Antitrust Litigation*, MDL No. 2420 (N.D. Cal) (settlements of almost \$140 million); *In re Cathode Ray Tube (CRT) Antitrust Litigation*, MDL 1971 (N.D. Cal.) (settlements of more than \$210 million).

appointment of Lowey Dannenberg P.C. and Kirby McInerney LLP as Interim Co-Lead Class Counsel.

DATED: August 21, 2020

Respectfully submitted,

/s/ Steven A. Kanner

Steven A. Kanner

Brian M. Hogan

FREED KANNER LONDON & MILLEN LLC

2201 Waukegan Road, Suite 130

Bannockburn, IL 60015

Tel: (224) 632-4500

Fax: (224) 632-4521

skanner@fklmlaw.com

bhogan@fklmlaw.com

*Counsel for Plaintiffs Budo Trading LLC and
Thomas Gramatis and the Proposed Class*